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Importer Security Filing "10+2" Interim Final Rule Published November 25, 2008 and the Impact on Customs Bonds

On November 25, 2008, The "Importer Security Filing and Additional Carrier Requirements" Interim Final Rule (IFR) was published in the Federal Register. This has commonly been referred to as ISF or 10+2. The IFR follows the Notice of Proposed Rulemaking (NPRM) published in the Federal Register on January 22, 2008 which solicited comments from the trade and interested parties. The impetus of ISF is the SAFE Port Act of 2006 which directed CBP to gather additional data elements before goods are shipped to the U.S. to more efficiently and effectively screen cargo and to target high risk cargo prior to arrival at a U.S. Port of destination. The ultimate purpose is to prevent terrorist weapons from being transported into the U.S. Under the new ISF regulations, CBP will require the following (10) data elements to be electronically submitted either through the Automated Broker Interface (ABI) or the Automated Manifest System (AMS) at least 24 hours before cargo is laden on board a vessel destined to the U.S.:

- Seller
- Buyer
- Importer of record number/foreign trade zone applicant identification number
- Consignee number(s)
- Manufacturer (or supplier)
- Ship to party
- Country of origin
- Commodity Harmonized Tariff Schedule (HTSUS) number
- Container stuffing location
- Consolidator (stuffer)

The IFR provides flexibility with respect to four of the data elements including manufacturer (or supplier), ship to party, country of origin and commodity (HTSUS) number. A range of responses may be submitted for these data elements, but the ISF must be updated as soon as more accurate or precise data becomes available, and no later than 24 hours prior to the ship's arrival at a U.S. Port. In addition, the following ISF data elements; container stuffing location and consolidator must be submitted as soon as possible, but no later than 24 hours prior to the ship's arrival at a U.S. Port. CBP will continue to seek comments from the trade with respect to the six data elements to which some type of flexibility has been provided and comments must be submitted on or before June 1, 2009.

The IFR will also require carriers to submit (2) additional pieces of information to the advanced cargo information already required under the current "24 Hour Rule":

- A vessel stow plan (bulk and break bulk carriers exclusively carrying bulk and break bulk cargo are exempt)
- Container status messages

The ISF as outlined in the IFR require the importer to file the necessary data elements or to designate an agent to file the data elements on their behalf. To effectively enforce compliance of the new ISF requirement, CBP has amended the bond conditions under 19CFR part 113 to cover ISF. If the importer elects to file the data elements either directly through ABI or through a customs broker, the importer must have at least one of the following bonds: a continuous CF301-1 basic importation and entry bond, CF301-2 custodial bond, CF301-3 international carrier bond, CF301-4 foreign trade zone bond or a separate Importer Security Filing Bond as provided for in the IFR. If the importer does not possess any of the above referenced bonds they may appoint

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an agent to be the ISF importer. The agent, who can be a customs broker, forwarder, carrier or other properly authorized party, must possess the required bond since they are designated as the ISF importer and are ultimately liable for the timely, accurate and complete submission of the Importer Security Filing. Entities who will serve in a capacity as agent and/or Importer Security Filing Importer who are not importers, carriers or who do not possess a continuous customs bond, may obtain a separate ISF bond which has been designated in the IFR. With respect to the use of single entry importer bonds for ISF, the current CBP position is; "Generally, continuous bonds will be accepted for the Importer Security Filing. Continuous bonds are verifiable electronically and will give CBP more transparency into the party and the bond's existence. Requests to file single entry bonds are will be evaluated on a case-by-case basis consistent with current practices."

The new ISF requirement will also carry an enforcement component in the form of liquidated damages for violations or breaches by the importer or carrier. The bond conditions will be amended to include agreements to pay liquidated damages for violations of the new regulations. If the principal fails to comply with the Importer Security Filing requirements, it was originally proposed the principal and the surety (jointly and severally) would pay liquidated damages equal to the value of the merchandise involved in the default. However, after reviewing comments from the trade and further consideration, CBP changed the liquidated damage amount to \$5,000.00 for each ISF violation. With respect to carriers, the following liquidated damage provisions will apply. The carrier agrees to provide advance cargo information under 19CFR part 4.7a. Defaults with respect to these obligations will result in liquidated damages in the amount of \$5,000.00 for each violation to a maximum of \$100,000.00 per conveyance arrival. The carrier agrees to comply with the vessel stow plan requirements under 19CFR part 4.7c. Defaults with respect to these obligations will result in liquidated damages in the amount of \$50,000.00 for each vessel arrival. The carrier agrees to comply with container status message requirements under 19CFR part 4.7d. Defaults with respect to these obligations will result in liquidated damages in the amount of \$5,000.00 for each violation to a maximum of \$100,000.00 per conveyance arrival.

The effective date of the IFR is January 26, 2009, however; the IFR also includes a delayed compliance date of (12) months after the IFR takes effect. The flexible enforcement policy will allow CBP to evaluate the new ISF requirements and take into account difficulties importers may face in complying with the new regulations. CBP will "show restraint in enforcing the rule during this (12) period as long as importers are making a good faith effort and satisfactory progress towards compliance". Since there is no effective way to assess what the extent of claims and/or losses under the new ISF requirement may be, the delayed compliance component will allow CBP, the trade and sureties to gather the necessary claim information to quantify any increase in exposure under Customs bonds resulting from the new regulations. Once the potential exposure can be quantified, sureties can better address any changes in underwriting or premiums which may result from the implementation of ISF.

Since carriers and most entities who import on a regular basis already possess continuous Customs bonds, those entities currently possessing continuous bonds will not be required to provide any riders or additional bonds to meet the new ISF requirements. Importers who do not have a continuous bond on file may wish to obtain one before the ISF requirements take effect. We encourage all importers seeking additional information regarding implementation of the new ISF requirements to contact their Customs broker or trade consultant for further guidance.

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